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Order 98-12-12



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

SERVED DEC 14 1998

Issued by the Department of Transportation
on the 10th day of December, 1998

In the matter of the Agreement
between Northwest Airlines, Inc.
and Continental Airlines, Inc.

ORDER GRANTING EXEMPTION

Summary

By this order, the Department grants to Northwest Airlines, Inc. (Northwest) and Continental Airlines, Inc. (Continental) a one year exemption from 49 U.S.C. §41105, which requires Department approval in the event of a transfer of certificate authority authorizing foreign air transportation.

Background

In January of 1998, Northwest Airlines Corporation (NWAC), the parent corporation of Northwest, announced its intent to purchase a 51% voting interest (a 14% equity interest)(together the "ownership interest") in Continental through a newly-created subsidiary, Newbridge Parent Corporation (Newbridge). On January 25, 1998, Northwest and Continental entered into two agreements: (1) a Master Alliance Agreement that would connect Northwest's and Continental's domestic networks, and (2) a Governance Agreement among Continental, NWAC, and Newbridge which limits NWAC's involvement in Continental's corporate affairs.

On October 23, 1998, the Department of Justice filed a civil antitrust suit to block NWAC from acquiring or holding a majority of the voting stock of Continental. *United States v. Northwest Airlines Corporation and Continental Airlines, Inc.*, E.D.Mich., Civil Action No. 98-7461.

On November 20, 1998, Northwest and Continental filed separate letters providing us with certain documents: a Second Amendment to the Governance Agreement, a Supplemental Agreement, an Amendment No. 2

to the Investment Agreement, a Guidance on Alliance Issues, a Northwest Airlines/Air Partners Voting Trust Agreement, and a Rights Agreement. Northwest reported that, among other things, pursuant to these agreements, it would now acquire fewer Continental shares, representing about 46 percent of the outstanding vote on a fully diluted basis.

The Department has jurisdiction over transfers of international route authority under 49 U.S.C. §41105. Thus, the Department has to determine whether the acquisition by Northwest of the ownership interest in Continental results in a *de facto* transfer of Continental's international routes to Northwest. However, the outcome of the pending Department of Justice legal proceeding may make this issue moot, thereby making any action by this Department on the matter unnecessary.

The Department thus finds that it is in the public interest to defer action on reviewing the transaction to determine if there has been a *de facto* route transfer temporarily, and grants Northwest and Continental a one year exemption from 49 U.S.C. §41105.

ACCORDINGLY,

1. We grant to Northwest Airlines, Inc. and Continental Airlines, Inc. an exemption from 49 U.S.C. §41105 with regard to the subject transaction;
2. This order shall be effective on the issue date of this order and will expire one year later;
3. This order may be revised, revoked, or amended at any time without hearing; and
4. This order will be served on Northwest, Continental, and the Antitrust Division of the Department of Justice.

By:

Charles A. Hunnicutt
Assistant Secretary for Aviation
and International Affairs

(Seal)